

MAR 20 '90 10:36 GCNW - SEATTLE

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DATE: March 20, 1990

TIME: 10:32am

PAGES FOLLOWING: Twelve (12)

NOTES: FYI, copy of the complaint filed yesterday

FAX RECEIPT CONFIRMED:

DATE/TIME/INITIALS: \_\_\_\_\_

SCL 04479

CTY0049487

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UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE CITY OF SEATTLE, and  
MUNICIPALITY OF METROPOLITAN  
SEA"TTLE,

Defendants.

CIVIL ACTION NO.

COMPLAINT

The United States of America, by authority of the Attorney General of the United States, at the request of the Secretary of Commerce, and on behalf of the public as trustee for natural resources, alleges:

NATURE OF THE ACTION

1. This is a civil action brought for injunctive and other equitable relief to abate the illegal discharge or deposit of refuse matter into navigable waters of the United States pursuant to section 13 of the Rivers and Harbors Act, 33 U.S.C. § 407, and for recovery of past and future damages to natural resources pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of

COMPLAINT - 1

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4 OBD-123  
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U.S. GPO: 1989-202-041/64933

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1 1986 ("SARA"), 42 U.S.C. § 9607(a). The United States seeks to  
2 abate future injury and to recover damages for existing injuries  
3 to natural resources for which it is trustee on behalf of the  
4 public, in connection with releases of refuse matter and other  
5 hazardous substances into the environment in and around Elliott  
6 Bay and lower Duwamish River.

#### 7 JURISDICTION AND VENUE

8 2. This Court has jurisdiction over this action pursuant to  
9 Section 13 of the Rivers and Harbors Act, 33 U.S.C. § 407,  
10 Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§  
11 1331(a) and 1345.

12 3. Venue is proper in this district pursuant to Section 13  
13 of the Rivers and Harbors Act, 33 U.S.C. § 407, Section 113(b) of  
14 CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b) and (c),  
15 because there have been illegal releases or threatened releases  
16 in this district of refuse matter and other hazardous substances  
17 from locations in and around the City of Seattle into Elliott Bay  
18 and the lower Duwamish River.

#### 19 DEFENDANTS

20 4. Defendant Municipality of Metropolitan Seattle  
21 ("METRO"), a municipality organized under the laws of the State  
22 of Washington, owns and operates a large sewer district which  
23 serves the Seattle metropolitan area.

24 5. Defendant The City of Seattle ("the City"), a  
25 municipality organized under the laws of the State of Washington,  
26 owns and operates much of the public works for the Seattle

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1 metropolitan area, including Seattle City Light, and owns  
2 numerous parcels of land adjacent to the Duwamish River and  
3 Elliott Bay.

4 GENERAL FACTUAL ALLEGATIONS

5 6. Elliott Bay is an embayment in central Puget Sound which  
6 encompasses the waterfront of downtown Seattle. The Duwamish  
7 River is the major source of freshwater to the Bay, emptying into  
8 Elliott Bay from the southwest. Elliott Bay and lower Duwamish  
9 River, to the point of navigation, are navigable waters within  
10 the meaning of Section 13 of the Rivers and Harbors Act, 33  
11 U.S.C. § 407.

12 7. The areas within Elliott Bay and the lower Duwamish  
13 River provide habitat for salmon, shellfish, finfish and other  
14 organisms, and are areas for commercial and recreational fishing  
15 These areas also include breeding and feeding grounds for  
16 wildlife, including species of migratory birds.

17 8. Metals such as chromium, cadmium, copper, zinc, and  
18 lead, and chemicals such as polychlorinated biphenyls ("PCBs"),  
19 polycyclic aromatic hydrocarbons ("PAHs"), pentachlorophenol  
20 ("PCPs"), and halogenated hydrocarbons have toxic effects on  
21 humans and other species, and are hazardous substances within the  
22 meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14). They  
23 are also refuse matter within the meaning of Section 13 of the  
24 Rivers and Harbors Act, 33 U.S.C. § 407. They are toxic to  
25 humans and some are suspected carcinogens. They are also toxic  
26 to other organisms and are associated with early mortality,

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1 physical deformities, diminished reproductive capacity, and other  
2 conditions associated with reduced viability.

3 9. Metals such as chromium, cadmium, copper, zinc, and  
4 lead, and chemicals such as PCBs, PAHs, PCPs, and halogenated  
5 hydrocarbons are highly persistent in the environment. PCBs,  
6 PAHs, and other chemicals are bioaccumulative in organisms, and  
7 thus when present in the environment, either suspended in water  
8 or attached to sediments in the water, will accumulate in living  
9 organisms in concentrations substantially higher than the  
10 concentrations of those compounds found in the environment to  
11 which the organisms are exposed.

12 10. METRO is the owner and operator of the primary sewer  
13 interceptor system in the Seattle area, which includes seventeen  
14 overflow points along Elliott Bay for combined sewer overflows  
15 ("CSOs"). Manufacturing establishments discharge wastes directly  
16 into METRO's sanitary sewer system.

17 11. On information and belief, METRO has illegally  
18 discharged, deposited, disposed of, and/or released, or has  
19 illegally controlled the discharge, deposit, disposal, and/or  
20 release of refuse matter and other hazardous substances into  
21 Elliott Bay or the Duwamish River.

22 12. On information and belief, the City has illegally  
23 discharged, deposited, disposed of, and/or released, and/or has  
24 illegally controlled the discharge, deposit, disposal, and/or  
25 release refuse matter and other hazardous substances into Elliott  
26 Bay or the Duwamish River.

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13. The Seattle-King county Health Department ("SKCHD") has posted warning signs at various locations around Elliott Bay and the Duwamish River that "bottomfish, crab and shellfish may be unsafe to eat due to pollution". The warning is based, in part on the presence of excessive toxic chemical concentrations in certain areas.

14. Fish, shellfish, and other animals within the trusteeship of the United States which inhabit, breed and feed and around Elliott Bay, the Duwamish River, and the tributaries of the Duwamish River have been reduced in population, or otherwise injured through the effects of increased levels of refuse matter and other hazardous substances on their health, reproductive capacity and survival.

15. Valuable habitat for fish, shellfish, and other animals has been seriously impaired or otherwise injured through the release of refuse matter and other hazardous substances in and around Elliott Bay, the Duwamish River, and the tributaries of the Duwamish River.

16. Refuse matter and other hazardous substances exist now and will remain available in the future in sediments and in the water column in Elliott Bay, the Duwamish River, and tributaries of the Duwamish River and within the food chain in that area, at concentrations that have caused and will continue to cause injury to natural resources of the United States.

17. The United States has incurred costs and will incur future costs in response to the injury to its resources from

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1 defendants' releases of refuse matter and other hazardous  
2 substances into the environment, including costs incurred and to  
3 be incurred in investigation and determination of the nature and  
4 extent of the injury and damage, and in the replacement and/or  
5 restoration of injured resources within its trusteeship.

6 FIRST CLAIM FOR RELIEF

7 18. The United States realleges and incorporates by  
8 reference paragraphs 1 through 17.

9 19. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides  
10 that the current owner of a facility; the owner or operator, at  
11 the time of disposal of hazardous substances, of a facility at  
12 which such hazardous substances were disposed of; and any person  
13 who, "by contract, agreement or otherwise," arranged for disposal  
14 or treatment of hazardous substances owned or possessed by such  
15 person, by any other person or entity, at any facility ... owned  
16 or operated by another party or entity and containing such  
17 hazardous substances, shall be liable for damages for injury to,  
18 destruction of, or loss of natural resources, including the  
19 reasonable costs of assessing such injury, destruction, or loss  
20 resulting from such release.

21 20. Metals such as chromium, cadmium, copper, zinc, and  
22 lead, and chemicals such as PCBs, PAHs, PCPs, and halogenated  
23 hydrocarbons released by defendants are hazardous substances  
24 within the meaning of Section 101(14) of CERCLA, 42 U.S.C. §  
25 9601(14).  
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1 21. Each named defendant is a "person" within the meaning  
2 of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

3 22. The METRO storm and sewer interceptor system and  
4 outfalls, the City property, including its sewer and storm drain  
5 interceptor system and outfalls, Elliott Bay and/or portions  
6 thereof, and the Duwamish River and/or portions thereof are  
7 "facilities" within the meaning of Section 101(9) of CERCLA, 42  
8 U.S.C. § 9601(9).

9 23. METRO and the City are owners or operators of  
10 facilities within the meaning of Section 107(a)(1) and (2) of  
11 CERCLA, 42 U.S.C. § 9607(a)(1),(2), and are persons who arranged  
12 for the disposal or treatment of hazardous substances by another  
13 entity at a facility containing such hazardous substances, withi  
14 the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. §  
15 9607(a)(3).

16 24. Hazardous substances have been released from the  
17 facilities identified in paragraph 22 above into the environment  
18 within the meaning of Section 101(22) of CERCLA, 42 U.S.C. §  
19 9601(22).

20 25. There has been and continues to be injury to,  
21 destruction of and loss of natural resources for which the Unite  
22 States is trustee caused by the releases of hazardous substances  
23 by defendants alleged herein, and resulting damages to those  
24 resources, within the meaning of Section 107(a)(4)(C) of CERCLA,  
25 42 U.S.C. § 9607(a)(4)(C).

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1 26. The United States has incurred and continues to incur  
2 response costs caused by the releases of hazardous substances by  
3 defendants and resulting injury, destruction and loss to natural  
4 resources for which it is trustee, and the assessment of such  
5 injury, destruction and loss, including resulting damages.

6 27. The United States has satisfied all conditions  
7 precedent to the initiation of this action.

8 28. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. §  
9 9607(a), defendants are jointly and severally liable for all  
10 response costs and damages, including loss of use and cost of  
11 restoration, replacement, or acquisition of equivalent resources  
12 resulting from injury to, destruction of, or loss of natural  
13 resources for which the United States is trustee, caused by  
14 hazardous substances released by defendants, and for the costs of  
15 assessing such injury and damages.

16 SECOND CLAIM FOR RELIEF

17 29. The United States realleges and incorporates by  
18 reference paragraphs 1 through 28.

19 30. Section 13 of the Rivers and Harbors Act, 33 U.S.C. §  
20 407, provides for injunctive and other equitable relief for the  
21 illegal discharge or deposit or for causing the illegal discharge  
22 or deposit of refuse matter in navigable waters or tributaries  
23 thereto.

24 31. Metals such as chromium, cadmium, copper, zinc, and  
25 lead, and chemicals such as PCBs, PAHs, PTPs, and halogenated  
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1 hydrocarbons are refuse matter within the meaning of Section 13  
2 of the Rivers and Harbors Act, 33 U.S.C. § 407.

3 32. Elliott Bay, the East and West Waterways, and the  
4 Duwamish River to the point of navigation are navigable waters  
5 defined within the meaning of Section 13 of the Rivers and  
6 Harbors Act, 33 U.S.C. § 407.

7 33. The collection, treatment and disposal system of  
8 METRO's combined sewer overflows ("CSOs"), and the property and  
9 plants owned by the City, including Seattle City Light, are  
10 located on a shore or wharf or are manufacturing establishments  
11 or mills as defined within the meaning of Section 13 of the  
12 Rivers and Harbors Act, 33 U.S.C. § 407.

13 34. METRO and the City have discharged, deposited, or  
14 caused or suffered to be discharged or deposited refuse matter  
15 into Elliott Bay, the East or West Waterways, or the Duwamish  
16 River or any tributary of these waters.

17 35. The discharges and deposits described in paragraph 34  
18 above were not made in connection with the improvement of  
19 navigable waters or construction of public works, and were not  
20 permitted by the Secretary of the Army or the United States  
21 Environmental Protection Agency ("EPA").

22 36. Those discharges and deposits by METRO described in  
23 paragraph 34 above that were liquid discharges and deposits did  
24 not come from streets and sewers but were wastes intentionally  
25 placed in METRO's care for treatment from manufacturing  
26 establishments, mills, and other facilities. Other discharges

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1 and deposits by METRO described in paragraph 34 above were not  
2 liquid.

3 37. METRO and the City have unlawfully discharged or  
4 deposited, or caused or suffered to be discharged or deposited,  
5 refuse matter from a shore, wharf, manufacturing establishment,  
6 or mill into navigable waters or tributaries of navigable waters  
7 of the United States in violation of Section 13 of the Rivers and  
8 Harbors Act, 33 U.S.C. § 407.

9 38. Pursuant to Section 13 of the Rivers and Harbors Act,  
10 33 U.S.C. § 407, defendants are liable for injunctive and other  
11 equitable relief for their continuing unlawful discharge or  
12 deposit of refuse matter and for the injury to natural resources  
13 resulting from their continuing unlawful discharge or deposit of  
14 refuse material into Elliott Bay, the East and West Waterways,  
15 the Duwamish River, and the tributaries to these waters.

16 PRAYER FOR RELIEF

17 WHEREFORE, Plaintiff, the United States of America, respectfully  
18 requests that the Court issue relief:

19 1) Enter a declaratory judgment that defendants are jointly  
20 and severally liable under Section 107(a) of CERCLA, 42 U.S.C. §  
21 9607(a), and Section 13 of the Rivers and Harbors Act, 33 U.S.C.  
22 § 407, for: a) response costs; b) costs for conducting a natural  
23 resource damage assessment; c) costs for damages to natural  
24 resources; and d) abatement for continuing injuries to natural  
25 resources within the trusteeship of the United States caused by  
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1 defendants' releases of refuse matter and other hazardous  
2 substances into the environment;

3 2) Ordering that defendants pay to the United States the  
4 reasonable costs of assessing the injury, destruction and/or loss  
5 of natural resources within the trusteeship of the United States  
6 caused by defendants' releases of refuse matter and other  
7 hazardous substances into the environment;

8 3) Ordering that defendants pay damages for the injury,  
9 destruction and/or loss of use of natural resources within the  
10 trusteeship of the United States resulting from defendants'  
11 releases of refuse matter and other hazardous substances,  
12 including but not limited to restoration, rehabilitation and/or,  
13 if accepted by the United States, acquisition of the equivalent  
14 of such natural resources;

15 4) Ordering that defendants restore the natural resources  
16 within the trusteeship of the United States resulting from  
17 defendants' releases of refuse matter and other hazardous  
18 substances;

19 5) Ordering that defendants reimburse the United States for  
20 all costs of enforcement, including attorneys fees, costs and  
21 expenses, incurred in this action;

22 6) Awarding the United States such other and further relief  
23 as this Court may deem appropriate.

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26 SCL 04490

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Respectfully submitted,

  
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SCL 04491